WP(C) 7829/2004
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY
JUDGMENT AND ORDER (CAV)

This fresh round of litigation pertains to the notice No. KRS.447/2004/51 dated 29/9/2004 issued by the Additional Deputy Commissioner, Kamrup (Metro) seeking eviction of the petitioners from the land involved following the cancellation of the settlement thereof in favour of their predecessor in interest. By order dated 15/10/2004, this Court while issuing notice directed maintenance of status quo of the land by the parties. Pending further consideration, by order dated 12/10/2004, this Court while fixing 15/10/2004 for motion hearing suspended the operation of the impugned notice dated 29/9/2004. The petitioners claim that on the basis thereof they continue to occupy the land as on date.

2. I have heard Mr. SP Roy, learned Counsel for the petitioners, Mr. S. Ali, Additional Advocate General, Assam, for the official respondents and Mr. CK SharmaBaruah, Sr. Advocate assisted by Mr. D. Das, Advocate for the respondent No. 4 and 5.

3. As observed herein above, the parties had crossed swords in their earlier outing also involving the same land. The debate there related to the validity of the settlement thereof made by the official respondents in favour of Shri Premoda Kanta Sarma (since deceased), the predecessor in interest of the petitioners. The endeavour to get the land cleared of the petitioners by the notice impugned is in the wake of the judicial determination upholding the challenge to the settlement leading to the cancellation thereof. Be that as it may, to resolve the present controversy as well a brief narration of the facts highlighted in the pleadings of the parties has to be essentially made.

4. Ugratara Temple (hereafter referred to as the Temple and/or the Institution) is situated at Uzanbazar in Guwahati. The Hindu shrine was installed by the Ahom Kings who for the deft preservation and management of the Temple established two families of Bardeuris as trustees, one each from Digheli and Soalkuchi in the District of Kamrup. The Bardeuris being the trustees of the Temple used to elect one Bordeuri for the supervision and management of the properties of the Temple and was designated as Doloi. The Doloi was the in-charge of the affairs of the Temple and supervised the daily and other religious rites performed on festive occasions and also used to settle Temple lands according to its requirements and realized rent from the tenants.

5. The Temple initially owned a plot of land covered by Lakheraj patta No. 1 of village Uzanbazar under Mouza Ulubari. According to the petitioners, their above named predecessor in interest was one of its Raiyats of a plot of land measuring 16 lechas covered by Dag No. 3862 of the said patta. The then Doloi of the temple, Shri Sashi Kanta Sarma also leased out the said land of the Temple to him vide a registered deed of lease being No. 1684 dated 9/3/1961 whereafter the predecessor in interest of the petitioners constructed an Assam Type House thereon being assessed as Holding No. 16A of Ward No. 2 of the Gauhati Municipal Corporation (hereafter referred to as the Corporation). The petitioners have claimed that their predecessor in interest also deposited a sum of Rs. 1,100/- with the Temple on 7/3/1961 for the settlement of the aforesaid land for which a receipt was issued. According to them, at the time of execution of the lease deed, there was no Management Committee in existence and the Temple used to exercise its rights and enjoy privileges through its Doloi.

6. Following some differences with the Bordeuries regarding powers and functions of Doloi, a suit being Title Suit No. 12/1930 was instituted before the District Judge of the Assam Valley District in Guwahati praying inter alia for the formulation of a scheme for the better management of the temple. The suit was eventually decreed on 10/2/1936 and a scheme was prepared by the Court as prayed for. Under the said scheme, a Management Committee was comprehended of which the Doloi was to be the Member thereof by virtue of his Office. It amongst others provided that the Doloi was to maintain a chitha for all lands of the Temple authorizing him to collect rent from the tenants. Restraints on his powers t

o settle the Temple land were delineated. Thereunder no new settlement of Guwaha ti Town land could be granted by the Doloi without the approval of the Managing Committee.

7. In between, the Assam State Acquisition of Lands Belonging to Re ligious or Charitable Institution of Public Nature Act, 1959, (hereafter referre d to as the Act) was enacted. It received the assent of the President on 24/4/19 61 and was published in the Assam Gazette on 12/4/1961. In exercise of powers un der section 30 thereof, the Assam State Acquisition of Lands Belonging to Religi ous or Charitable Institution of Public Nature Rules, 1962, (hereafter referred to as the Rules) were framed. By an amendment to the Act in 1987, section 25A wa s inserted mandating constitution of a Management Committee for each religious o r charitable institution of public nature to exercise control over the annuity a nd verification of the proper maintenance of the institution.

8. The petitioners have maintained that their predecessor in intere st being in occupation of the land involved initially as the Temple's Raiyat as well as its lessee, being entitled to be settled therewith under section 15 of t he Act, the Government of Assam vide letter No. 307/88/89 and by the order of th e Additional Deputy Commissioner in KRL 193/88/32 dated 15/3/1990 granted settle ment thereof and accordingly the revenue records were corrected. The Lakheraj Pa tta No. 1 was altered to K.P. Patta No. 555 and old Dag No. 3862 was changed to Dag No(s) 927, 933 and 935 of village Sahar Guwahati, 6th Part, Mauza, Guwahati.

9. At that stage, the respondent No. 4, one of the Bordeuries from Digheli, District Nalbari, preferred an appeal before the Assam Board of Revenue (hereafter referred to as the Board) under 21(3) of the Act questioning the set tlement of the land in favour of the predecessor in interest of the petitioners. As the appeal was delayed, an application for condonation of delay was also fil ed. The predecessor in interest of the petitioners resisted the appeal contendin g inter alia that the Temple was located on the land in Dag No. 3863 bounded by a brick wall. It was denied that on the western side of the brick wall and the L amb Road, there was a space for flower bearing trees meant for daily rituals. So me other Bordeuries also preferred another appeal assailing the settlement. The appeals registered as RA 55(K)/1993 and RA 138(K)/1993 were disposed of on conte st by the Board allowing the same by its judgment and order dated 10/6/1997. The settlement in favour of the predecessor in interest of the petitioners was thus cancelled.

10. Shri Premoda Kanta Sarma having expired on 13/12/1995 during the pendency of the appeals, the petitioners as his heirs carried the contest to th is Court under Article 226 of the Constitution of India in CR 3228/97. The learn ed Single Judge by his judgment and order dated 6/3/2003 negated the assailment. WA 202/2003 preferred by the petitioners was also dismissed on 24/8/2004. The R eview Application 118/2004 seeking reconsideration of the verdict in the appeal also met the same fate on 8/10/2004. Admittedly the Special Leave Petition No. 2 679/2004 preferred against the determination in the appeal was also rejected by the Apex Court. By the impugned notice as above, the petitioners having been int imated that the settlement of the land in favour of their predecessor in interes t had been cancelled and that the same being a government road side land, they w ere required to vacate it by removing the constructions thereon, they have appro ached this Court again.

11. By a series of affidavits supplementing the writ petition, the p etitioners have brought on record the notice dated 28/9/2004 issued by the Addit ional Deputy Commissioner, Kamrup (Metro), under Rule 18(2) of the Settlement Ru les framed under the Assam Land and Revenue Regulation, 1886 (hereafter referred to as the Regulation) asking the petitioner No. 1 to vacate the same land as th e occupation thereof in terms of the report of the Circle Officer was without an y settlement. The fact that on an earlier occasion, by a notice dated 21/4/1982 under Rule 18(3) of the Settlement Rules in Eviction Case No. 40/82, the predece ssor in interest of the petitioners was asked to vacate the same land and that e ventually the proceeding was dropped on an appeal being preferred before the Boa rd has also been introduced. The petitioners have also incorporated the fact tha

t the Bardeuries of the Temple in a meeting held on 11/4/2004 though expressed d issatisfaction and concern over the institution of legal proceedings against the ir predecessor in interest concerning the suit land. Similarly the petitioners h ave thereby produced a copy of the letter No. KRL 28/93 dated 14/7/2005 of the A dditional Deputy Commissioner, Kamrup (Metro) to the effect that the Government had granted settlement of lands to Raiyats holding land under the said Temple on the basis of the Circular dated 19/12/1989 and that following the decisions of this Court, the land has been registered as Sarkari and the petitioners had be en asked to vacate it under Rule 18(2) of the Settlement Rules. The letter also disclosed that the petitioners prayed for resettlement thereof for which the con sent of the Managing Committee was required.

12. In his counter, the respondent No. 5 as the General Secretary of the Managing Committee of the Institution contended that the petitioners who we re in the illegal occupation of a roadside government land belonging to the Temp le were evicted therefrom on 12/10/2004 and that therefore the petition had beco me infructuous. He endorsed the impugned notice, branding the petitioners as tre spassers stating that the land measuring 2.37 is covered by Dag No. 933 and 935 of Sahar Guwahati Part VI of Mouza Ulubari situated by the entrance of the Templ e. He assailed the maintainability of the writ petition in the face of the decis ions in the earlier proceedings setting at naught the purported settlement of th e said land in favour of the petitioners', the predecessor in interest. It is co ntended that the impugned notice had been issued under section 16(2) of the Act and having been served on the petitioners, the challenge thereto was unsustainab le.

13. In the parawise comments produced in course of the arguments, th e official respondents pleaded that following the verdict of this Court, the Gov ernment at the appropriate level by communication No. RRT141/70/114 dated 13/9/2 004 instructed the Deputy Commissioner, Kamrup (Metro) to correct the land recor ds registering the land involved as Sarkari and to draw up a proceeding under Ru le 18(2) of the Settlement Rules for the eviction of the unauthorized encroacher s thereof. The land accordingly was made Sarkari and following the correction of the records, the petitioners were served with the notice dated 28/9/2004 dire cting them to vacate the land forthwith. According to the official respondents, in term of the report of the concerned Circle Officer, the eviction was duly car ried out at 11 AM of 12/10/2004. However, after the receipt of the order dated 1 2/10/2004 passed in the instant proceeding no further action had been taken.

14. The petitioners in their affidavit in reply, however, have denie d that the land in their occupation is a roadside Government land and that they had been evicted therefrom on 12/10/204 as alleged. The contention that the impu gned notice had been issued under section 16(2) of the Act has also been refuted .

15. Mr. Roy in the background of the above pleadings has assiduously urged that the impugned notice on the face of it is illegal, arbitrary and with out jurisdiction and is liable to be set aside. The same is not only vague, as i t does not disclose the legal provision under which it had been issued nor the p articulars of the land from which the eviction is sought, it is high handed as w ell as malafide, he urged. He argued that the settlement in favour of the predec essor in interest of the petitioners having been cancelled only by the impugned notice, their (petitioners) possession of the land could not be proscribed as un authorized on 28/9/2004. According to him, even assuming that the impugned notic e had been issued under Rule 18 of the Settlement Rules, the same is nonest in l aw, the said legal provision having been adjudged unconstitutional, null and voi d by this Court in Bandana Goala versus Board of Revenue and others, AIR 1972 As sam and Nagaland 11. Further the land in occupation of the petitioners could not be a roadside reserved land being represented to be ceiling surplus, he urged. Mr. Roy maintained that the earlier proceeding under Rule 18 (3) of the Settleme nt Rules against the predecessor in interest of the petitioner having been dropp ed, the impugned notice presumably under Rule 18(2) of the Settlement Rules is p atently illegal. According to the learned Counsel, dismissal of the Special Leav e Petition by the Apex Court ipso facto was not demonstrative of the affirmation

of the judicial determination of this Court and that the impugned notice having generated a fresh cause of action, the instant proceeding is maintainable in law. Mr. Roy urged that in any view of the matter, the petitioners in terms of Rule 8 of the Rules was entitled to 90 days to vacate the land and on that ground as well, the impugned notice is inoperative, null and void. The learned Counsel to buttress his arguments placed reliance on the decision of the Apex Court in Subhadra Rani Pal Choudhury versus Sheirly Weigal Nain and others, (2005) AIR SCW 2278 and of this Court in Bandhana Goala versus Board of Revenue and others, AIR 1972 Assam and Nagaland 11.

16. The learned Additional Advocate General in reply has argued that the settlement in favour of the predecessor in interest of the petitioners having been cancelled, section 16 of the Act was invocable in the facts of the case and, therefore, the impugned notice under Rule 18(2) of the Settlement Rules was rightly issued.

17. Mr. SharmaBaruah while subscribing to the above has asserted that in view of the adjudication in the earlier proceedings annulling the settlement granted in favour of the predecessor in interest of the petitioners, no new issue survives for judicial scrutiny and the writ petition lacks bonafide. Referring to the various provisions of the Act and the Rules, the learned Sr. Counsel has maintained that the purported lease by the Doloi granted in the year 1961 being repugnant to the said statute, was void. Though the entire land of the Temple had been acquired under the Act, in view of section 5 thereof, the institution was entitled to retain the land in dispute and, therefore, the same could not have been transferred, alienated or settled by any authority in favour of a third party, he urged. In this regard, Mr. SharmaBaruah invited the attention of this Court to the lease deed (Annexure 3 to the writ petition) evidencing existence of standing trees of the Temple on the land demised. The learned Sr. Counsel insisted that the petitioners in fact, following the decision of this Court had been evicted from the land on 12/10/2004 and sought to reinforce his point by referring to the report dated 13/10/2004 of the Circle Officer, Guwahati Revenue Circle, submitted to the Additional Deputy Commissioner, Kamrup (Metro), Guwahati. According to the learned Sr. Counsel, the contention based on Bandhana Goala, supra, is untenable in view of the amendment occasioned in section 154 of the Regulation as well as section 154A thereof. The omission to mention the legal provision in the impugned notice also was of not consequence, he argued. The settlement in favour of their predecessor in interest having been cancelled following a full fledged judicial determination, no notice under section 10 or Rule 8 was called for and the impugned notice issued in exercise of powers under Rule 18 of the Settlement Rules and section 16 of the Act was valid. While affirming that the petitioners had been evicted form the land on 12/10/2004, the learned Sr. Counsel argued that as admittedly the Temple was the owner thereof in possession on 13/4/1958 (corresponding to the last day of Chaitra 1365 BS), it was entitled to retain the same under section 5 of the Act and, therefore, the impugned action could not be faulted with in any manner. The land being appurtenant to the Temple as comprehended in section 5 of the Act, the same is required to be handed over to it. The decision canceling the settlement of the land in favour of the predecessor in interest of the petitioners having attained a finality, the instant proceeding is frivolous and vexatious and is liable to be dismissed, he pleaded.

18. The rival assertions have been duly taken note of. Before adverting to polemic bearing on the sustainability of the impugned notice, it would be appropriate to dwell on some relevant factual aspects surfacing in the earlier bout of litigation. The respondent No. 4 in his appeal before the Board had proclaimed that the Temple premises within which the religious rites were performed was enclosed by a brick wall and that beyond the western boundary thereof there was a space for entry into the Temple precincts from the adjoining Lamb Road. The place was a compound appurtenant to the Temple where some flower bearing plants were grown for use in the religious rituals. This space was between the Lamb Road and the western boundary wall of the Temple and was an integral part of the compound thereof not settled with any tenant. The Temple premise enclosed by the brick wall was originally covered by the Dag No. 3863 while the open space was

by Dag No. 3862 of Lakheraj Patta No. 1 of Sahar Guwahati. The respondent No. 4 claimed that land under both the Dags had been in actual occupation of the Templ e. He had averred, that during the last resettlement operation land of Dag No. 3 863 was covered by Dag No. 932 while Dag No. 3862 was split into three viz Dag N o(s). 933, 934 and 935. He claimed that under the Act, the Temple was entitled t o retain the possession of the lands under its occupation, considering the natur e of its use and orientation thereof. In the other appeal filed by the Bordeurie s as well, the land involved was stated to be used for approaching the Temple fr om the Lamb Road whereupon flower bearing trees had been grown for its use. The Settlement thereof in favour of the predecessor in interest of the petitioners w as categorically denied in both the appeals.

19. The learned Board while allowing the appeal noted that as per th e land records, the land in dispute was within 24 feet of the central line of Pu blic Works Department/Corporation road within the Guwahati city and that the ent ire plot measuring 1 katha corresponding to Dag No(s) 933, 934 and 935 was appur tenant to the main Temple for which it was entitled to retain possession of the said land free of revenue in terms of section 5(1) of the Act. The settlement th ereof in favour of the predecessor in interest of the petitioners was set aside.

20. Dismissing the challenge to the above conclusion, a learned Sing le Judge of this Court in CR 3228/97 held that the land in question situated wit hin Guwahati Town (Uzan Bazar) was non-agricultural in character and that under the scheme settled by the Civil Court in TS No. 12/1930, the Doloi had no right to settle any Town land belonging to the Temple without the approval of the Mana ging Committee. There being no such approval, it was held that the lease deed da ted 9/3/1961 embodied a sham transaction. The claim that the predecessor in inte rest of the petitioners was a Raiyat was also dismissed holding that the said te rm was not relatable to a non-agricultural land. The learned Single Judge, there fore, recorded his complete agreement with the findings of the Board and thus di smissed the writ petition.

21. The learned Appellate Bench while sustaining the decision of the learned Single Judge declared that the Doloi had no power to settle any land wi thout the sanction of the Managing Committee. It further ruled that the land in question was of the non-agricultural category and, therefore, the Government had no authority to settle the same with any person who did not belong to the class or classes specifically mentioned in section 15 of the Act. It concluded that t here was no document or record to establish that the petitioners or their predec essor in interest are or were either a Raiyat or occupancy tenant. While holding that the land under the Act could be settled only with those specified persons who were in occupation of the land with the status of the raiyat under the Act of 1935, Assam (Temporary Settled Districts) Tenancy Act, 1935, or under occupan cy tenant under the Act of 1975 , it was held that both the Assam (Temporarily S ettled Districts) Tenancy Act, 1953 and the Assam (Temporarily Settled Districts) Tenancy Act, 1971, were applicable to agricultural land only and not to a Town land. The lease deed dated 9/3/1961 was held to be invalid in absence of the ap proval of the Managing Committee. The decision in the writ appeal having remaine d unaltered and uninterfered, the Special Leave Petition being dismissed by the Apex Court, the findings as above have attained a finality and are binding on th e parties. The challenge to the settlement infavour of the predecessor in intere st of the petitioners initiated in the appeal before the Board thus culminated i n the Special Leave Petition. The decision of the Apex Court in Subhadra Rani Pa ul Choudhury, supra, to the effect that the dismissal of the Special Leave Petit ion does not amount to upholding the law propounded in the decision does not adv ance the case of the petitioners noticing the finality in the determinations on the issues in the Writ Appeal.

22. In the above premise, the issue with regard to the settlement of the land cannot be reopened in the instant proceeding. Noticeably, the parties have not and rightly so disputed the identity of the land in dispute. As a corol lary, as on date, the petitioners have no subsisting right in law to occupy the land and that in terms of section 5 of the Act, the Temple is entitled to retain

the possession thereof.

23. The relevant provisions of the Act and the Rules in brief may be noticed. The Act is a legislation to provide for the acquisition of land belonging to religious institutions of public nature. Section 3 thereof empowers the State Government by notification in the official gazette to declare that all rights in land belonging to a Religious or Charitable Institution of Public Nature would vest in the State free from any encumbrance with effect from the first day of the agricultural year next following the date of publication of such notification. Section 4 recites that notwithstanding any thing to the contrary to any law for the time being in force or any custom or any agreement or contract, express or implied, on the publication of the notification under section 3, all right, title and interest in the lands of a religious or charitable institution with the subsoil (including the rights in mines, minerals, fisheries, tanks, forests, grazing reserves, hats, bazaars, roads and ferries) would cease and such lands including such rights shall vest absolutely in the State free from all encumbrances with effect from the date specified in the notification.

Notwithstanding anything contained in section 3(1) and section 4 (1), all religious or charitable institutions w.e.f. date of such vesting, were entitled to retain possession free of revenue, all such lands which on or before the last date of Chaitra, 1365 B.S. were in the ownership of the institution and were actually occupied by it by constructing buildings and raising orchards and flower gardens together with the compound appurtenant thereto and all lands reserved for the resident devotees for residential purposes under section 5. The right of ownership and possession of such lands, however, has been made non-transferable or non-alienable. Section 6 while empowering the Deputy Commissioner to take possession of the land that had vested in the State debars him from doing so in respect of lands and buildings saved by section 5. Section 7, 8 and 9 deal with payment of compensation for the land acquired.

24. Under section 10, it is incumbent on the State to provide an opportunity to the owner of any building, structure or crop on the land to exercise the opportunity of removing the same within a prescribed period, authorizing the sale thereof in public auction in case, he fails to do so. Section 15 prescribes the parameters on which the land acquired under the Act can be settled with a Raiyat as envisaged therein. A land acquired under the Act and under any occupation of the Raiyat on the date of the notification under section 3 would be at the disposal of the State Government for settlement thereof with the categories of persons enumerated in section 16. Sub-section (2) of the said provision empowers the Deputy Commissioner or any other officer authorized in that regard to evict any person in unauthorized possession of such land.

As alluded hereinabove, constitution of a Managing Committee for each religious or charitable institution of public nature has been made obligatory under section 25A effected by the amendment of the Act in the year 1987. Section 30 confers the Rule making power on the State Government, in exercise whereof the Rules had been framed. Under Rule 8, the notice contemplated in section 10 has to be of a period of 90 days and has to state that if the building, structure or crop is not removed within the said period, the same would be sold in public auction.

25. From the documents available on records, it is manifest that after the decision in the writ appeal, the land records were corrected, the land was designated as sarkari and the appropriate authority was instructed to institute a proceeding for eviction of the unauthorized encroachers under Rule 18(2) of the Settlement Rules. This was followed by the notice dated 28/9/2004 consequent upon an enquiry which indicated that the petitioners had no right to occupy the land. As a matter of fact, the letter No. RRT 141/70/104 dated 13/9/2004 of the Additional Chief Secretary (Revenue), Government of Assam, clearly reveals that the said authority had noticed the decision of the learned Board and of this Court setting aside the settlement of the Temple land by the Additional Deputy Commissioner. The very fact that the land was ordered to be classified as sarkari signifies that the settlement of the predecessor in interest of the petitioners had been cancelled. The notice dated 28/9/2004 only reiterated the above and directed the petitioners to vacate the land under Rule 18(2) of the Settlement Rules

. The particulars of the land were clearly set out in the notice. The impugned n otice dated 29/9/2004 though a day thereafter apprised the petitioners about the cancellation of the settlement requiring them to vacate the land by removing an y construction thereon forthwith. The official respondents thus following the ca ncellation of the settlement, evidently proceeded under Rule 18(2) of the Settle ment Rules construing the land to be a government road side land. The notices da ted 28/9/2004 and 29/9/2004, in view of the sequence of events cannot be read in isolation. On a cumulative reading thereof, the plea of vagueness does not meri t acceptance.

26. A plain reading of the provisions of the Act unequivocally demon strates that with the publication of the notification under section 3(1) the lan d specified vests in the government free of all encumbrances. However, under sec tion 5, land mentioned therein can, notwithstanding such vesting be retained by a religious or charitable institution. To put it differently, though with the in vestiture, all rights, title and interest in the land of a religious or charitab le institution would cease and stand bestowed on the State free from all encumbr ances, such an institution would be entitled to retain possession of the land id entified in section 5 of the Act. Though the State in view of the notification w ould hold the right, title and interest in the lands involved, the religious or charitable institutions envisaged under section 5 would be entitled to continue with the possession thereof. In that view of the matter, the land in dispute hav ing been established to be a roadside land as held by the learned Board, the aut hority of the Government to invoke its powers under section 18(2) of the Settlem ent Rules cannot be held to be lacking. The petitioners not being entitled in la w to occupy the same, in my considered view, the power located in section 16 of the Act to evict a person in unauthorized possession thereof was available to th e State respondents. Admittedly the Temple had been the owner of the land before the acquisition thereof and that the same had vested in the Government only on the publication of the notification under section 3 of the Act. The Revenue reco rds as noticed by the Board prove that it is a roadside land. The plea that bein g a ceiling surplus land, it could not have been a roadside land in the above fa ctual backdrop is of no persuasive worth.

27. The requirement of notice under section 10 is for a limited purp ose of providing an opportunity to the owner of a plot or structure or crop on t he land acquired to remove the same lest those are sold off in public auction. T he notice under Rule 8 is only to effectuate the said objective. These provision s by no means can denude the government of its prerogative or authority to evict an unauthorized encroacher from any land vested in it by the operation of the A ct. The prescription of section 10 or Rule 8, therefore, cannot exclude the Stat e Government from resorting to an action under section 16 thereof. The above pro visions are not mutilative of each other. Section 10 or Rule 8 cannot be concede d a primacy over section 16 of the Act to override the applicability thereof or render the impugned notice ineffectual for non-compliance thereof. The contentio n that the impugned notice is not in terms of Rule 8 therefore is of no avail.

28. The fact that on an earlier occasion, an eviction proceeding aga inst the predecessor in interest of the petitioners concerning the same land and initiated under Rule 18(3) of the Settlement Rules had been dropped is of no de finitive significance no decision on merits having been recorded in favour of th e occupier. The notice might have been withdrawn on various considerations and t he withdrawal propriovigore does not substantiate that either the predecessor in interest of the petitioners was not an unauthorized occupant of the land or tha t the same was not a roadside land. In my opinion, nothing turns decisively on t his decision of the State authorities. That the Bordeuries in a meeting have res ented the institution of legal proceedings against the predecessor in interest o f the petitioners is also of no consequence in face of the consistent deductions on issues of facts and law recorded in the earlier proceedings.

29. Rule 18 of the Settlement Rules was struck down by this Court in Bandhana Goala, supra, as discriminatory and void being violative of Article 14 of the Constitution of India. This Court held that in absence of any bar in the said Rule or the Regulation for the government to evict trespassers by approach

ing the Civil Court as well, two alternative remedies would be open and availabl e to it to deal with the trespassers. There being no guidance in the Rules or th e Regulation as to the circumstances in which the action under Rule 18 or instit ution of a suit in a Civil Court would be permissible, the government was at lib erty to pick and choose either of the courses without any fetter under the Law. As it had the potential of exposing the same kind of encroacher of government la nd to different treatments, Rule 18 was held to be discriminatory and thus void.

30. Following the amendment of the Regulation by Assam Act XXIX of 1 971, Clause (n) was incorporated in section 154 (1) of the Regulation as hereund er.

(n) &Any matter regarding ejectment of any person from a land over which no p erson has accrued the right of a proprietor, land holder or settlement holder an d the disposal of any crop raised, or any building or other construction erected without authority on such land.

31. Thus consequent upon the amendment, jurisdiction of the civil Co urt except otherwise expressly provided in the Regulation or in the Rules framed thereunder was ousted in matters regarding ejectment from a land of any person not possessed of any right of a proprietor, landholder or settlement holder as w ell as for disposal of any crop raised or any building or other constructions er ected without any authority on such land. Section 154 A also introduced by the s aid amendment enjoined that notwithstanding anything contained in any judgment, decree or order of this Court, any notice served or action taken or penalty impo sed to any ejectment done under Rule 18 would always be deemed to have been vali dly done. The said provision also barred the continuance of any suit or proceedi ng in Court against the government or any person or authority for any act done o r purported to be done under Rule 18 and prohibited enforcement of any decree or order for such action.

32. In view of the consideration on which Rule 18 had been adjudged unconstitutional and the legislative reparation as above, the impugnment of the notice dated 29/9/2004 on this count has to fail.

33. The contents of the letter No. KRL-28/93 dated 14/7/2005 to the effect that the Government had granted settlement of the land to Raiyats under S hri Shri Kamakhya Devalaya, Sukreswar Devalaya and Shri Shri Ugratara Devalaya o n the basis of the Government Circulars referred to therein and that the consent of the new Managing Committee when formed would be pertinent to consider the pe titioners request for reinstatement of the land does not advance their case. The letter on the other hand corroborates the stand that the petitioners had been e victed from the land on 12/10/2004 at 11 P.M. pursuant to the impugned notice. T he settlement granted in favour of their predecessor in interest having been adj udged to be illegal and invalid, as on date, they have no right to occupy the la nd in dispute. The impugned action, in view of the above findings cannot be impe ached as unsustainable or flawed in law. The decision making process does not su ffer from any error in law or procedure. No perversity, illogicalness or malafid e is discernible. The course adopted accords with the decisions recorded in the earlier proceedings as well as the legal provisions involved.

In view of the above, the petition being devoid of merit fails a nd is, therefore, dismissed. The interim order stands vacated. No costs.